Remarks

Claims 1-19 are pending.

Claims 1-19 were rejected by the Examiner.

Claims 9 and 10 were rejected under 35 USC 101 as being directed to non-statutory subject matter. As suggested by the Examiner, claim 9 has been amended to change the word 'having' to 'embodied,' thereby overcoming this rejection. Withdrawal of this rejection is requested.

The office action stated that claims 5 and 8 were rejected under 35 USC 103(a) as being unpatentable over Chong et al. (US Patent No. 6,205,557), yet the rejection was directed to claims 1-19. Applicant therefore assumes that the Examiner intended to reject all claims over Chong. Clarification of this rejection is requested.

In the Response to Arguments, the Examiner states that the Applicants' arguments were not persuasive. The arguments discussed in the Response to Argument were 1) that Chong does not teach determining that a first processor requires maintenance, and 2) that DB103 is not a single network device.

With regard to the first point, the Examiner states "It is so simple to understand that it is depend upon when detection method is applied (before or after the processor is failed) to provide maintenance or repairing." That may or may not be true, but is irrelevant because the claims at issue, mainly claims 1, 9, 12 and 14 do not address 'detecting.' The claims are directed to either 'determining' or 'identifying.' Detection of a failed processor is not relevant to the Applicant's invention as claimed. Chong only teaches detection of a failed processor. Chong cannot teach that a processor still has active calls when the processor *has failed.* Failed processors cannot have active calls. By default, when a processor fails, the calls are no longer active. Chong only

teaches the assumption of calls in the setup stage, not active calls. See Chong, Abstract, and col. 5, lines 26-32.

Applicants' invention as claimed is directed to switching calls on a processor that is still functioning to another processor, when the processor that is still functioning requires some sort of maintenance.

Detection of a failed processor is far different from determining that an otherwise functioning processor requires maintenance. Determination, without failure, that a processor requires maintenance is not 'so simple,' as the Examiner alleges in the Response to Arguments. To overcome the apparent confusion about differences between 'detection' and 'determination,' Applicant has amended the claims, similar to the language in claim 1, to claim *determining that a time has been reached for an upgrade of firmware on a first processor that is still actively handling calls*. Support for determining that a time has been reached is supported in the specification in several places, including page 4, lines 8-15, and the support that the processor is still actively handling calls is supported in the specification on page 4, lines 5-7, among other places.

As stated above, Chong only teaches switching calls in the call setup stage from a failed processor to a back up processor after *detecting* that the processor has failed. There is no determination that a time for an upgrade has been reached and the processor in Chong cannot be actively handling calls, as it has failed.

With regard to the second point, the Examiner refers to col. 2, line 36 to teach that the DB103 may be in a single device. First, col. 2, line 36 merely states, "The switch 101 also transmits call information to a database 103 via the signaling network 102, which may be preferably implemented using an AT&T SS7 [signal system 7] signaling network, capable of

transferring information between databases." It would appear from this that the DB103 resides separately from the switch 101, as switch 101 must transmit call information to the DB103 across the signaling network 102.

Second, DB103 is not the entity that detects the processor failure in Chong. The determination of the failure is performed by the interface server 120 (Chong, col. 5, lines 20-22). The DB103 may need to be reconfigured if interface server 120 detects the failure (Chong, col. 5, lines 2-5), but it does not detect the failure. The difference between detecting a failure and determining that a processor has reached a time for an upgrade is addressed above.

It is therefore submitted that claims 1-19 are patentably distinguishable over the prior art and allowance of these claims is requested.

No new matter has been added by this amendment. Allowance of all claims is requested. The Examiner is encouraged to telephone the undersigned at (503) 222-3613 if it appears that an interview would be helpful in advancing the case.

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Respectfully submitted,

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